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Attorneys for Defendant Ghilotti Bros. Inc.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

JOSE RAMIREZ, LUIS GOMEZ, and
MARCK MENA ORTEGA on behalf of
themselves and all other persons similarly
situated,

Plaintiffs,

v.

GHILOTTI BROS, INC., a corporation;
GHILOTTI BROTHERS CONSTRUCTION,
INC., a corporation, and DOES 1 through 50,
inclusive,

Defendants.

CASE NO. 3:12-cv-04590

**DECLARATION OF AN NGUYEN RUDA
IN SUPPORT OF DEFENDANT GHILOTTI
BROS., INC.'S OPPOSITION TO
PLAINTIFFS' MOTION FOR
CONDITIONAL CERTIFICATION OF
COLLECTIVE ACTION**

Judge: Hon. Charles R. Breyer
Date: March 29, 2013
Time: 10:00 A.M.
Crtrm: 6, 17th Floor

DECLARATION OF AN NGUYEN RUDA

I, An Nguyen Ruda, do hereby declare and state as follows:

1. I am an attorney duly licensed to practice law before all courts of the State of California. I am a partner of the law firm of Jeffer Mangels Butler & Mitchell LLP, attorneys of record for Defendant Ghilotti Bros., Inc. ("GBI") in the above-entitled matter. I have personal knowledge of what is stated in this declaration and, if called upon to testify, I could and would testify competently thereto.

2. On December 11, 2012, I was present and defended Michael Mario Ghilotti in his capacity as Person Most Knowledgeable for GBI, which deposition was transcribed by Mary E. Garland (C.S.R. No. 4721) of Capital Reporting Company. True and correct copies of the transcript of that deposition, specifically pages 17:3-23; 118:2- 119:3; 145:2-17; 146:17-148:9; 167:17-23; and 190:20-193:14, the cover page, and the court reporter's certificate are attached hereto as Exhibit "A."

3. On December 20, 2012, I conducted the deposition of Plaintiff Jose Ramirez, which deposition was transcribed by Coal Corey (C.S.R. No. 10699) of Atkinson-Baker Court Reporters, Inc. True and correct copies of the transcript of that deposition, specifically pages 37:15- 38:6; and 112:22-113:14, the cover page, and the court reporter's certificate are attached hereto as Exhibit "B."

4. On December 20, 2012, I conducted the deposition of Plaintiff Marck Mena Ortega, which deposition was transcribed by Ora B. Kohn (C.S.R. No. 11933) of Atkinson-Baker Court Reporters, Inc. True and correct copies of the transcript of that deposition, specifically pages 132:1-133:7; 138:1-7; and 139:16-18, the cover page, and the court reporter's certificate are attached hereto as Exhibit "C."

5. On December 19, 2012, I conducted the deposition of Plaintiff Luis Gomez, which deposition was transcribed by Ora B. Kohn (C.S.R. No. 11933) of Atkinson-Baker Court Reporters, Inc. True and correct copies of the transcript of that deposition, specifically page 98:1-8, the cover page, and the court reporter's certificate are attached hereto as Exhibit "D."

I declare under penalty of perjury under the laws of the United States of America and the State of California that the foregoing is true and correct and that this Declaration was executed on this, the twenty-sixth day of February, 2013, at Los Angeles, California.

DECLARATION OF AN NGUYEN RUDA

EXHIBIT A

Capital Reporting Company

1

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

JOSE RAMIREZ, LUIS GOMEZ, and
MARCK MENA ORTEGA on behalf
of themselves and all persons
similarly situated,

No. C-12-4590-CRB

Plaintiffs,

vs.

GHILOTTI BROS., INC., a
corporation; GHILOTTI BROTHERS
CONSTRUCTION, INC., a corporation;
and DOES 1 to 50, inclusive,

Defendants.

/

VIDEOTAPED DEPOSITION OF MICHAEL MARIO GHILOTTI

VOLUME I

DATE: December 11, 2012

TIME: 9:43 a.m.

LOCATION: ROSEN BIEN GALVAN & GRUNFELD
315 Montgomery Street
Tenth Floor
San Francisco, California

REPORTED BY: Mary E. Garland
Certified Shorthand Reporter
License Number 4721

Capital Reporting Company

2

1 A P P E A R A N C E S

2

3 For the Plaintiffs:

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13

14

Also Present:

15

Sean McGrath, Video Technician
16 Stephanie Taylor

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17

1 mean Ghilotti Bros., Inc.? 09:58:15

2 A. Yes. 09:58:16

3 Q. According to the first page of this website, 09:58:17

4 GBI employs over 275 individuals. 09:58:19

5 Is that accurate, or is the LinkedIn 200 or 09:58:25

6 less a better number at the present time? 09:58:30

7 A. At the present time, I'm not sure of what 09:58:34

8 exactly the number is. We have seasonal employees; it 09:58:38

9 varies from day to day. 09:58:43

10 Q. What's your best estimate of how many 09:58:45

11 employees are working for you as of last month, 09:58:48

12 November 2012? 09:58:52

13 A. Approximately 200. 09:58:54

14 Q. And when you mention the seasonal employees, 09:58:59

15 would that number go up or down in December? 09:59:04

16 A. It would go down. 09:59:07

17 Q. Are you including seasonal employees in the 09:59:09

18 estimate of 200? 09:59:12

19 A. Yes. 09:59:14

20 Q. Over the course of the past year, are you able 09:59:16

21 to estimate for me the highest number of employees you 09:59:24

22 had during 2012? 09:59:25

23 A. I believe that number would be close to 270. 09:59:27

24 Q. What month would that have been most likely to 09:59:38

25 have been in? 09:59:41

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1 the payroll department of your company. 01:52:54
2 A. And there's probably a different instance for 01:52:57
3 every job. There's some jobs where the project 01:53:00
4 management team is unique to that job; on a heavy 01:53:04
5 highway job; and the supervisor will take them in to 01:53:07
6 the trailer, and either he or the project team may 01:53:11
7 deliver the project documents to the main office. 01:53:15
8 There might be runners, there might be other employees 01:53:19
9 that take it from the job site to the office. 01:53:24
10 There's project managers and project engineers 01:53:29
11 that are working out of the main office. So they may 01:53:33
12 be delivered by the supervisor to them and then they 01:53:36
13 are walked in to operations. There's no steadfast 01:53:40
14 rule. It's a coordination issue between the supervisor 01:53:47
15 and the project management team. 01:53:50
16 Q. Now, can you tell me, on a given date, 01:53:53
17 approximately how many of these time cards would be 01:53:58
18 submitted to Ms. Wales for processing? 01:54:01
19 MS. RUDA: Overbroad as to scope and time. 01:54:04
20 THE WITNESS: On a daily basis, the number 01:54:10
21 could go from zero to 20, maybe 25. 01:54:12
22 BY MS. GRUNFELD: 01:54:18
23 Q. Because each time card represents a job for 01:54:19
24 that date; is that correct? 01:54:21
25 A. And may -- maybe -- there may be two time 01:54:23

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1 cards for a job, if there's more equipment, and 01:54:28
2 resources, and manpower that can fit on one time card; 01:54:31
3 but it varies from job to job and activity to activity. 01:54:36
4 Q. And what hours does Ms. Wales normally work? 01:54:41
5 A. I believe she's usually -- she's in there -- I 01:54:46
6 think she starts at seven. She usually works her shift 01:54:57
7 from seven, from Monday through Friday. 01:55:01
8 Q. Seven till when? 01:55:03
9 A. Well, I think she's -- you know, seven to 01:55:05
10 whatever the eight-hour day is. I don't -- I don't 01:55:07
11 specifically know her hours. I know that she's had -- 01:55:13
12 again, because of some injuries and some personal time 01:55:16
13 off, and, you know, operations and stuff, she's had -- 01:55:19
14 had a challenge -- 01:55:23
15 Q. And who does -- 01:55:24
16 A. -- with regard to that. 01:55:25
17 Q. Yes. I'm sorry. 01:55:26
18 Who does she report to? 01:55:28
19 A. Dan Chin. 01:55:29
20 Q. Does Dan Chin play any role in the actual 01:55:33
21 entry of the employee time into Timberline, to your 01:55:37
22 knowledge? 01:55:46
23 A. No. There may be an instance, once in a 01:55:46
24 while, that I think he has had to do the inputting 01:55:50
25 himself possibly. I don't know for sure. I know that 01:55:53

Capital Reporting Company

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1 to job sites. 02:44:13

2 A. So the method is that Ben Barrios starts 02:44:16
3 contacting supervisors in the morning to go over the 02:44:20
4 resources that they need for the following day on their 02:44:31
5 job. That communication takes place for several hours 02:44:36
6 in the morning. And at some point, Ben does his best 02:44:48
7 to compile a planning worksheet that we have discussed, 02:44:53
8 basically, in the AVD system, that incorporates those 02:45:02
9 needs and those resources. 02:45:07

10 At some point later on in the morning -- 02:45:11
11 mid-afternoon, actually, he communicates those requests 02:45:14
12 and does a general summary to a couple of the managers 02:45:22
13 -- most notably, Dominic Nuccio -- and then sometimes 02:45:28
14 communicates to people in charge of the equipment, and 02:45:36
15 goes through that review process, ultimately to arrive 02:45:45
16 at a final product, of which he finalizes and 02:45:50
17 disburses. 02:45:56

18 Q. And that product is the dispatch report that's 02:45:57
19 marked as Exhibit 9? 02:45:59

20 A. One of the products. The main product is the 02:46:01
21 time card that we have been talking about. This is a 02:46:05
22 byproduct of it that's used for managers. It's also 02:46:10
23 consistent with -- this is a summary version. The time 02:46:16
24 cards are the job-related dispatch. 02:46:20

25 Q. Now, when you say that Ben Barrios contacts 02:46:24

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1 supervisors in the morning, is that contact by 02:46:28

2 telephone, or e-mail, or both? 02:46:31

3 A. Mostly by telephone. I don't know that 02:46:33

4 there's much of any e-mail. Sometimes on specific 02:46:40

5 projects, a supervisor may fax in documents, requests 02:46:45

6 sometimes. 02:46:55

7 Q. And the communications you described in the 02:46:57

8 afternoon with Mr. Nuccio, are those by telephone, in 02:46:59

9 person, or e-mail typically? 02:47:04

10 A. They can typically either be by phone or in 02:47:08

11 person. I don't think there's any e-mail 02:47:11

12 communication. 02:47:14

13 Q. Now, according to Exhibit 9 -- I counted the 02:47:14

14 job numbers that are in the corner. Such as at the top 02:47:19

15 left, you have "9401." Do you see that? 02:47:24

16 A. Yes. 02:47:27

17 Q. So I counted up, and for this particular day, 02:47:28

18 I counted 32 jobs, on November 13th, 2012. 02:47:31

19 And if you want to check that, you could, or 02:47:38

20 we could just say it's approximately 32. But would 02:47:42

21 that be a typical number of jobs for Ghilotti Bros., to 02:47:46

22 run on a particular day? 02:47:49

23 MS. RUDA: It's overbroad. It's vague and 02:48:24

24 ambiguous as to time. 02:48:27

25 THE WITNESS: Well, as best as I can tell, 02:48:56

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1 there's 19 specific jobs. There's some jobs that have 02:48:58
2 multiple dispatches. 02:49:04
3 With relation to your question about the 02:49:07
4 number of jobs, as we discussed before, it can range 02:49:10
5 from zero to 25 to 30, and varies throughout the year 02:49:15
6 with any -- a number in between. 02:49:24
7 BY MS. GRUNFELD: 02:49:26
8 Q. Just so you know, I asked for all of these 02:49:27
9 documents to be produced, but this is the only one that 02:49:29
10 was produced to me. So I need to ask you whether this 02:49:32
11 is typical or not. 02:49:36
12 A. This is, I would say, a higher level of 02:49:37
13 activity than -- than the norm. 02:49:45
14 Q. By what percentage? 02:49:48
15 A. This would be in the 85 to 90 percent echelon, 02:49:50
16 maybe 95. 02:49:58
17 Q. And if you count 19 jobs here, does that mean 02:49:59
18 there were 19 supervisors in the field? 02:50:09
19 A. No. 02:50:11
20 Q. How do you know how many supervisors are in 02:50:12
21 the field on this date, November 13, 2012? 02:50:15
22 A. Well, there's a way that you count up the 02:50:22
23 number of supervisors by where their name is reflected 02:50:37
24 in this list. The fact that a supervisor is out in the 02:50:41
25 field doesn't mean that he's necessarily operating a 02:50:45

Capital Reporting Company

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1 job. We have jobs where there's one lead supervisor. 02:50:48

2 And a supervisor can be running equipment 02:50:50

3 because his job is inactive, down because of weather, 02:50:53

4 different issues. So the corresponding number between 02:50:58

5 the number of jobs and the number of supervisors that 02:51:03

6 are active doesn't -- it doesn't correlate. So you -- 02:51:06

7 presumably, the most accurate way is to look through 02:51:13

8 the dispatch and determine by visual inspection how 02:51:17

9 many supervisors are active for that day. 02:51:23

10 Q. And when you say "look through the dispatch," 02:51:26

11 do you mean Exhibit 9? 02:51:28

12 A. Correct. 02:51:30

13 Q. And when I see the name "Randy Davidson" in 02:51:31

14 the first job listed, was he a supervisor on that date? 02:51:35

15 A. I believe so. 02:51:43

16 Q. And if I look to job number 11427, also on the 02:51:43

17 first page, there's two names there, "Kevin Dern" and 02:51:48

18 "James Jaye." Are they both supervisors? 02:51:52

19 A. Kevin is a construction manager. James is a 02:51:56

20 supervisor. 02:52:04

21 Q. And looking below there, you see the name 02:52:05

22 Plaintiff "Mark Ortega;" right? 02:52:08

23 A. Right. 02:52:10

24 Q. And so on this date, Mr. Ortega was assigned 02:52:12

25 to drive flat truck 70; is that correct? 02:52:14

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1 know, the big cabover trucks -- like I said, five-, 03:27:02
2 seven-axle trucks -- and then transport trucks like we 03:27:07
3 talked about here. So it's a combination of all 03:27:11
4 different types. 03:27:13

5 Q. But those larger trucks -- the five-, seven- 03:27:14
6 axle, and transport -- would not be driven by the three 03:27:17
7 plaintiffs in this case; is that correct? 03:27:22

8 A. Not likely, no. They -- they are typically 03:27:23
9 restricted to just the teamsters. 03:27:26

10 Q. Going back to the list, have we missed any 03:27:31
11 kinds of trucks that Ghilotti Bros., owns currently? 03:27:35

12 A. I think that's it. 03:27:44

13 Q. On any given end of a shift, are the trucks 03:27:45
14 typically left at the work site, or are they brought 03:27:49
15 back somewhere? 03:27:52

16 MS. RUDA: Overbroad as to time and scope. 03:27:53

17 THE WITNESS: Again, each specific job has its 03:27:57
18 own relationship. And it can vary from job to job, and 03:28:00
19 it can vary from day to day. It depends sometimes on 03:28:09
20 whether or not resources from the yard are needed out 03:28:14
21 on the job, whether or not material was hauled in or 03:28:17
22 disposed of. These are arrangements that are done 03:28:25
23 between the supervisor and his crew. 03:28:29

24 Sometimes equipment gets transported into the 03:28:35
25 yard, including trucks, especially if it's got 03:28:38

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1 A. Yes. 04:17:07
2 Q. We've been talking quite a bit today about 04:17:08
3 some of these policies and procedures that are 04:17:15
4 reflected in topics 1 through 7 of the PMK notice, 04:17:17
5 which is Exhibit 3 to this deposition. 04:17:22
6 I had one additional question about topic 6, 04:17:29
7 which generally involves the assignment of trucks to 04:17:38
8 construction sites, and the times the trucks leave and 04:17:44
9 return to the yards. 04:17:47
10 And that is: Do the trucks -- is there any 04:17:49
11 system to check the odometers on the trucks to 04:17:56
12 determine how many miles they've been driven on a given 04:17:59
13 workday? 04:18:04
14 A. No, there's not. 04:18:05
15 Q. Have you ever discussed with your management 04:18:07
16 team instituting a process of looking at the odometers 04:18:19
17 on a daily basis to determine how far they've been 04:18:23
18 driven? 04:18:28
19 A. No. 04:18:28
20 Q. Now, are you aware that the three plaintiffs 04:18:29
21 in this lawsuit are claiming that they are required to 04:18:32
22 go to the yard before the official start time and pick 04:18:35
23 up trucks and drive them, before the official start 04:18:39
24 time of the shift? 04:18:44
25 A. I'm aware that they are claiming that they 04:18:49

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1 haven't received compensation for the time that they 04:18:53
2 put in to drive the vehicles, is my understanding. 04:18:55

3 Q. Among other things, yes. 04:18:58

4 And before this lawsuit was filed, did you 04:19:00
5 ever discuss with your management team the claims that 04:19:04
6 plaintiffs are making here, such as whether there 04:19:08
7 should be compensation for the time that an employee 04:19:11
8 goes to the yard to get the truck and drive it to the 04:19:14
9 site? 04:19:18

10 MS. RUDA: Vague and ambiguous. 04:19:20

11 THE WITNESS: I'm trying to make sure I have 04:19:26
12 the right timeline. So if you could repeat the 04:19:28
13 question, it'd help, I guess. 04:19:31

14 BY MS. GRUNFELD: 04:19:33

15 Q. Sure. Earlier today we were discussing a 04:19:33
16 memorandum that was sent out by Ms. Taylor in 2007. 04:19:35
17 Obviously, that was prior to this lawsuit being filed. 04:19:39
18 And maybe I'll just start with the memorandum. 04:19:45

19 At the time that memorandum was issued, were 04:19:48
20 you discussing with your management team the issue of 04:19:51
21 compensating employees for that pre-shift driving time? 04:19:57

22 A. The conversations we had revolving around 04:20:09
23 compensation were mainly with Stephanie Taylor and 04:20:12
24 myself, and possibly Mike Llamas, but did not include, 04:20:16
25 I don't believe, the full management team at all. It 04:20:24

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1 was limited to those two, two people. 04:20:28
2 Q. And was there an incident or an issue that 04:20:30
3 caused you to discuss that issue? 04:20:33
4 A. Well, I think that we came to the realization, 04:20:40
5 as I mentioned earlier, that our attempt to be uniform 04:20:42
6 and consistent actually continued an inconsistent 04:20:46
7 approach, in the sense that we felt that drivers and 04:20:53
8 supervisors weren't on the same page. 04:21:01
9 Supervisors were compensating through other 04:21:04
10 methods, possibly for compensation, and that was in 04:21:08
11 addition to the compensation we were trying to provide 04:21:12
12 under that procedure. So that was the nature of the 04:21:16
13 discussions that we were having. 04:21:19
14 Q. And were those back in 2007, when the memo 04:21:21
15 issued? 04:21:24
16 A. After that. 04:21:25
17 Q. And I believe you testified earlier you don't 04:21:26
18 recall how long after the date of the memo that you 04:21:29
19 were having those conversations? 04:21:31
20 A. Correct. 04:21:33
21 Q. And are you able to tell me what the upshot of 04:21:34
22 those discussions was? 04:21:38
23 MS. RUDA: Vague and ambiguous as to "upshot." 04:21:44
24 THE WITNESS: Yeah, maybe you could be more 04:21:47
25 specific on what you're asking. 04:21:49

Capital Reporting Company

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1 BY MS. GRUNFELD: 04:21:52

2 Q. Sure. You testified that that memo went out 04:21:52

3 and that it did not achieve your goal of consistent 04:21:55

4 compensation, and then there were further discussions 04:21:59

5 about it. And what I'm trying to understand is: What 04:22:02

6 was the result of those discussions? 04:22:06

7 A. The result of those discussions was that the 04:22:08

8 system that we believe was in place prior to that, 04:22:12

9 where compensation was organized and accounted for by 04:22:17

10 the individual supervisor, was probably the best system 04:22:26

11 to move forward on. 04:22:30

12 Q. So at that time, you discontinued the driving 04:22:33

13 bonus that the memo talks about? 04:22:37

14 A. Correct. 04:22:40

15 Q. And other than the driving bonus, have there 04:22:41

16 been other attempts in the time period since the date 04:22:51

17 of that memo to address the issue of drivers who are 04:22:53

18 not being paid for time worked before the official 04:23:00

19 start time? 04:23:03

20 A. I think there was a discussion -- 04:23:04

21 MS. RUDA: That misstates the testimony. For 04:23:06

22 clarity of the memos, October 2007. Go ahead. 04:23:09

23 THE WITNESS: I think there was a discussion 04:23:17

24 around the time that we received a letter from an 04:23:18

25 employee that questioned our ability to adequately 04:23:21

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CERTIFICATION OF DEPOSITION OFFICER

I, MARY E. GARLAND, duly authorized to administer oaths pursuant to Section 2093(b) of the California Code of Civil Procedure, do hereby certify that the witness in the foregoing deposition was duly sworn by me to testify to the truth, the whole truth and nothing but the truth in the within-entitled cause; that said deposition was taken at the time and place therein stated; that the testimony of said witness was thereafter transcribed by means of computer-aided transcription under my direction; that the foregoing is a full, complete and true record of said testimony. And that the witness was given an opportunity to read and correct said deposition and to subscribe to the same.

I further certify that I am not of counsel or attorney for either or any of the parties in the foregoing deposition and caption named, nor in any way interested in the outcome of the cause named in said caption.

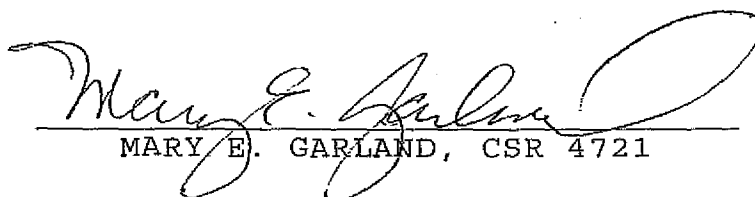

MARY E. GARLAND, CSR 4721

EXHIBIT B

1 UNITED STATES DISTRICT COURT
2 FOR THE NORTHERN DISTRICT OF CALIFORNIA

3 ---oOo---

4
5 JOSE RAMIREZ, LUIS GOMEZ, and)
6 MARCK MENA ORTEGA, on behalf of)
7 themselves and all other persons)
8 similarly situated,)

9 Plaintiffs,)

10 vs.)

No. C 12-04590 JSC

11 GHILOTTI BROS, INC., a corporation;)
12 GHILOTTI BROTHERS CONSTRUCTION,)
13 INC., a corporation, and DOES)
14 1 through 50, inclusive,)
15 Defendants.)
16 -----)

17 DEPOSITION OF

18 JOSE RAMIREZ

19 SAN FRANCISCO, CALIFORNIA

20 December 20, 2012

21 ATKINSON-BAKER, INC.
22 COURT REPORTERS
23 www.depo.com
24 800-288-3376

25 REPORTED BY: CORAL COREY, CSR NO. 10699

FILE NO: A60B7DD

1 Q. And what about Romero, to your knowledge does 11:45:15
2 he still work at the company?

3 A. Yes. I want to add something.

4 Q. Sure.

5 A. I remember now. I went into the refinery
6 under a false pretense.

7 Q. Okay. Let's talk -- okay. So hold onto that
8 thought. Okay. I'm going to write down the words "false
9 pretense" so that I remember to ask you about this, but let
10 me finish my other line of questioning.

11 The times when you did not take lunch breaks, when
12 you worked on Ken Pagan's crew at the refinery, were you
13 paid for that time, to your knowledge?

14 A. No.

15 Q. Do you know what a pay discrepancy form is? 11:47:10

16 A. Yes.

17 Q. Did you ever submit -- and these paid
18 discrepancy forms you've heard us discuss it in other
19 depositions, correct?

20 A. Yes.

21 Q. And these forms, they're received with your
22 paycheck each week, correct?

23 A. Yes.

24 Q. Do you know what the purpose of the form is?

25 A. Yes, because it happens sometimes where they

1 did not put down all of the days that had been worked. 11:48:07

2 Q. And so the purpose of the form was for you to
3 let the company know that there was something short about
4 your paycheck, correct?

5 MS. MUSELL: Misstates testimony. You can answer.

6 THE WITNESS: Yes.

7 MS. RUDA: Q. Did you ever submit a payroll
8 discrepancy form to be paid for your missed lunch breaks?

9 A. No.

10 Q. Not just when you worked with Ken Pagan but at
11 any time from 2008 forward?

12 A. Can you repeat the question.

13 Q. And I'm expanding the question, not just when
14 you worked with Ken Pagan, but at any time from 2008
15 forward, have you ever submitted a payroll discrepancy form 11:50:40
16 to be paid for a missed 30-minute meal break?

17 A. No. One time there was a -- that I filled out
18 a form to get paid for some hours that I had not been paid
19 for, and with the supervisor Bob Hanna, I gave him the form
20 and in return -- wait, I actually went to the company
21 because I didn't get paid. I went to see Frank Palagi.

22 Q. And we're actually going to talk about that,
23 the time that you submitted the discrepancy form to Bob
24 Hanna and that you had an issue and it was later paid.
25 We're going to talk about that.

1 THE WITNESS: Yes, but the end of the day the 17:07:32
2 supervisor asked me how much I wanted to be paid, if 10
3 hours or how many.

4 MS. RUDA: Q. Okay.

5 A. And I told him that he was the supervisor, and
6 I didn't know how many hours he was going to pay me.

7 Q. Did you tell him I want to be paid for 10
8 hours?

9 A. He told me if I would accept 10 hours, and I
10 answered, I didn't know, because he was the supervisor, and
11 I told him you're the one who has to know how many hours you
12 have to pay me.

13 Q. Do you think maybe he was asking you because
14 he wanted to know how many hours you had worked?

15 MS. MUSELL: Objection. Calls for speculation. 17:08:47

16 THE WITNESS: No, because we worked the eight
17 hours, and he was referring to the driving.

18 MS. RUDA: Q. So is it possible that on 2428 that
19 you were paid for four hours of driving time? I'm sorry,
20 2483.

21 MS. MUSELL: Objection. Calls for speculation.

22 THE WITNESS: When I left Ukiah, he had suggested
23 he'll pay me 10 hours, and I replied it was for him to pay
24 me whatever he wanted to pay me.

25 And on that day, Bulmaro, he brought in another

1 truck, and he told me that he wasn't paid for the four 17:09:48
2 hours.

3 MS. RUDA: Q. But you were paid, correct?

4 MS. MUSELL: Misstates testimony.

5 THE WITNESS: When I left Ukiah, we agreed on 10
6 hours, he had said. I didn't accept that. I left the truck
7 at the yard in San Rafael. When I was going home in my car
8 on the Richmond Bridge, he called me and told me I'm going
9 to pay you the four hours, because we have worked together
10 before, and he wanted to pay me the four hours.

11 MS. RUDA: Q. For your -- for the time, because it
12 took you two hours to drive up and two hours to drive down,
13 correct?

14 A. Yes.

15 Q. Who was this? 17:11:28

16 A. Bradley Gary.

17 Q. Gary Bradley?

18 A. Gary. I want to add something as well.

19 Q. Go ahead.

20 A. The travel was very long, and some of the
21 workers were not happy going there with their own cars
22 because the gasoline was very expensive.

23 So they decided to use a van that is used for many
24 people, and he assigned me to drive it, but they were not
25 going to pay me for the driving, and I wasn't paid for that.

REPORTER'S CERTIFICATE

I, CORAL COREY, CSR No. 10699, Certified
Shorthand Reporter, certify;

That the foregoing proceedings were taken before
me at the time and place therein set forth, at which time
the witness was put under oath by me;

That the testimony of the witness, the questions
propounded, and all objections and statements made at the
time of the examination were recorded stenographically by
me and were thereafter transcribed;

That the foregoing is a true and correct
transcript of my shorthand notes so taken.

I further certify that I am not a relative or
employee of any attorney of the parties, nor financially
interested in the action.

I declare under penalty of perjury under the laws
of California that the foregoing is true and correct.

Dated this JAN 8, 2013.

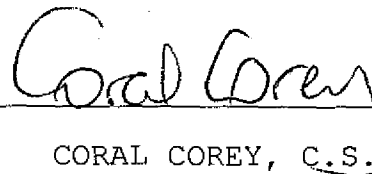

CORAL COREY, C.S.R. No. 10699

EXHIBIT C

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

---o0o---

JOSE RAMIREZ, LUIS GOMEZ, AND)
MARCK MENA ORTEGA ON BEHALF OF)
THEMSELVES AND ALL OTHER PERSONS)
SIMILARLY SITUATED)

Plaintiffs,)

vs.) CASE: C12-04590 JSC

GHILOTTI BROS, INC., A)
CORPORATION; GHILOTTI BROTHERS)
CONSTRUCTION, INC., A)
CORPORATION, AND DOES 1 THROUGH)
50, INCLUSIVE,)

Defendants.)

VIDEOTAPED DEPOSITION OF MARCK MENA ORTEGA
SAN FRANCISCO, CALIFORNIA
FRIDAY, DECEMBER 14, 2012

ATKINSON-BAKER, INC.
COURT REPORTERS
800.288.3376
WWW.DEPO.COM

Reported By: Ora B. Kohn, CSR 11933

File No. A60B7DC

1 Q. From 2008 to 2011, did any supervisor ever let 16:47:58
2 you leave a job site early to return a truck so that 16:48:04
3 you could be back at the yard by 3:30? 16:48:20
4 MS. GRUNFELD: Objection. Overbroad. 16:48:24
5 THE WITNESS: At times. 16:48:29
6 MS. RUDA: Q. Can you tell me how many times? 16:48:30
7 A. Not many. 16:48:36
8 Q. More than five times? 16:48:38
9 A. From five to ten times. 16:48:45
10 Q. Okay. 16:48:48
11 A. That's what I remember. 16:48:54
12 Q. Okay. So from 2008 to 2011, can you recall 16:48:55
13 times when a foreman has let you leave a job site early 16:49:01
14 because you picked up a truck in the morning? 16:49:07
15 MS. GRUNFELD: Objection. Asked and answered. 16:49:21
16 MS. RUDA: Q. The last question was because 16:49:24
17 you were returning a truck. This question is because 16:49:25
18 you picked up a truck. 16:49:33
19 A. What was the question? 16:49:44
20 Q. So the question is; between 2008 to the 16:49:45
21 present, has any foreman let you leave the job site 16:49:50
22 early because you had picked up a truck in the morning 16:49:57
23 from the -- from the yard? 16:50:08
24 MS. GRUNFELD: Objection. Vague and 16:50:15
25 ambiguous. Overbroad and compound. 16:50:17

1	THE WITNESS: At times, yes.	16:50:22
2	MS. RUDA: Q. Can you give me an estimate of	16:50:24
3	how many times?	16:50:26
4	A. I have been allowed to leave early to go to	16:50:33
5	the yard?	16:50:36
6	Q. Yes.	16:50:38
7	A. Not many, but some ten times, more or less.	16:50:44
8	Q. Okay. I'm going to mark the next exhibit.	16:50:49
9	This is Exhibit 3.	16:51:52
10	[Whereupon, Deposition Exhibit 3, a	16:51:52
11	Payroll Discrepancy Report and payroll	16:51:52
12	records Bates stamped GBI-04558 and	16:51:52
13	PL0300 to PL0301 was marked for	16:51:52
14	identification.]	16:51:59
15	Please review and tell me when you're ready.	16:51:59
16	A. (DOCUMENT REVIEW.) Yes.	16:52:03
17	Q. Do you know what this document is?	16:52:07
18	A. This is payroll, no?	16:52:14
19	Q. Right. Do you recall receiving a copy of this	16:52:18
20	form with your weekly paycheck?	16:52:22
21	A. Yes.	16:52:32
22	MS. GRUNFELD: Vague and ambiguous as to time.	16:52:32
23	MS. RUDA: Q. And the answer is what?	16:52:37
24	A. Yes.	16:52:39
25	Q. And do you recall receiving one of these	16:52:42

1 Q. Okay, so maybe it's my mistake, and I'm sorry. 17:01:39
2 What I wanted to know was; when you submitted this 17:01:46
3 discrepancy form, was there ever a time that you 17:01:49
4 submitted for additional hours on the discrepancy form. 17:01:58
5 where you were then not paid for those additional hours 17:02:09
6 on a second check? 17:02:12
7 A. No. 17:02:18
8 Q. Thank you. It was my mistake for 17:02:19
9 clarification. Four. 17:02:22
10 [Whereupon, Deposition Exhibit 4, a 17:02:22
11 Collection of payroll discrepancy 17:02:22
12 reports was marked for identification.] 17:03:49
13 A. (DOCUMENT REVIEW.) 17:03:49
14 Q. Do you recognize the documents that I've 17:04:12
15 attached as Exhibit 4? 17:04:16
16 A. Yes. 17:04:21
17 MS. GRUNFELD: Object to "recognize" as vague 17:04:21
18 and ambiguous. 17:04:23
19 MS. RUDA: Q. Are these other discrepancy 17:04:27
20 forms that were submitted for you? 17:04:30
21 A. Yes. 17:04:35
22 Q. Did you ever submit a discrepancy form for 17:04:38
23 driving time? 17:04:46
24 A. No. 17:04:53
25 Q. Why not? 17:05:00

1	A.	Because they are not paid.	17:05:03
2	Q.	How did you know that?	17:05:07
3	A.	Because no one is paying for it. That's what	17:05:10
4		I think.	17:05:15
5	Q.	Did anybody ever tell you that?	17:05:16
6	A.	Several laborers who drive.	17:05:21
7	Q.	Did any foreman ever tell you that?	17:05:28
8	A.	That driving is not paid?	17:05:35
9	Q.	Yes.	17:05:39
10	A.	They must know. They do not pay for it.	17:05:42
11	Q.	My question is; did anybody ever tell you	17:05:46
12		that?	17:05:49
13	A.	No, because in 2007 they did pay. They would	17:05:56
14		give you a separate check. And all of a sudden, that	17:06:04
15		was stopped.	17:06:09
16	Q.	Did anybody ever tell you that you could not	17:06:11
17		submit a discrepancy form for driving time?	17:06:15
18	A.	No.	17:06:25
19	Q.	Did you ever submit any discrepancy -- payroll	17:06:27
20		discrepancy form for a missed meal break?	17:06:32
21	A.	I would do that the least.	17:06:53
22	Q.	So the answer is no?	17:06:56
23	A.	No. No. Excuse me.	17:06:58
24	Q.	Did you ever submit any discrepancy form for	17:07:01
25		missed rest breaks?	17:07:06

STATE OF CALIFORNIA)

) SS

COUNTY OF CONTRA COSTA)

I, ORA B. KOHN, Certified Shorthand

Reporter, do hereby certify:

That prior to being examined, the witness in the foregoing proceedings was by me duly sworn to testify to the truth, the whole truth, and nothing but the truth.

That said proceedings were taken before me at the time and place therein set forth and were taken down by me in shorthand and thereafter transcribed into typewriting under my direction and supervision.

I further certify that I am neither counsel for, nor related to, any parties to said proceedings, nor in any way interested in the outcome thereof.

In witness whereof, I have hereunto subscribed my name.

Dated: December 26, 2012



Ora Kohn

ORA B. KOHN, CSR 11933

(SIGNATURE NOT REQUESTED)

EXHIBIT D

1 Q. And the times that you went to Frank Pillagi 14:33:41
2 with a discrepancy, were you paid? 14:33:47
3 A. Yes. Frank would say if you worked, you're 14:33:55
4 going to get your money. And that's where he would 14:34:06
5 check and call the foreman, and that's when I heard the 14:34:11
6 conversation that the foreman would be in agreement 14:34:22
7 that I worked that time. And then he would sign, and 14:34:24
8 he would give it to the payroll lady. 14:34:31
9 Q. Did you ever tell Mr. Pillagi that you had 14:34:36
10 missed meal breaks and that you had not been paid for 14:34:45
11 those missed meal breaks? 14:34:56
12 A. No. Just when I returned the form, it would 14:35:01
13 be for the hours that I was at the job site. 14:35:12
14 Q. Did you ever tell Mr. Pillagi -- Pillagi 14:35:15
15 excuse me -- that you had missed rest breaks that you 14:35:24
16 had not been paid for? 14:35:31
17 A. As I mentioned before, no. 14:35:35
18 Q. Did you ever tell Mr. Pillagi that you were 14:35:43
19 being asked to drive and that you were not being 14:35:46
20 compensated for that time? 14:35:52
21 A. Not to him, but on one occasion, it was for, 14:36:01
22 like, two or three months that we received checks for 14:36:11
23 driving, so it was a separate check. But that just 14:36:15
24 lasted for two months or three. 14:36:26
25 Q. Do you remember when that occurred? 14:36:30

1 STATE OF CALIFORNIA)

2) SS

3 COUNTY OF CONTRA COSTA)

4 I, ORA B. KOHN, Certified Shorthand
5 Reporter, do hereby certify:

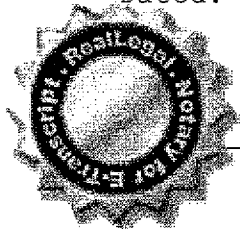
6 That prior to being examined, the witness in the
7 foregoing proceedings was by me duly sworn to testify
8 to the truth, the whole truth, and nothing but the
9 truth.

10 That said proceedings were taken before me at
11 the time and place therein set forth and were taken
12 down by me in shorthand and thereafter transcribed into
13 typewriting under my direction and supervision.

14 I further certify that I am neither counsel
15 for, nor related to, any parties to said proceedings,
16 nor in any way interested in the outcome thereof.

17 In witness whereof, I have hereunto
18 subscribed my name.

19
20 Dated: January 2, 2013



23 ORA B. KOHN, CSR 11933

24
25 (SIGNATURE REQUESTED)

EXHIBIT E



75 Rowland Way
Suite 250
Novato, CA 94945

415-798-5900 PHONE
415-892-7354 FAX
kccllc.com

February 25, 2013

Sean Gibbons, Esq.
Jeffer Mangels Butler & Mitchell LLP
1900 Avenue of the Stars, 7th Floor
Los Angeles, CA 90067

Re: JMBM Collective-Action Notice
Administration Services Estimate

Dear Sean,

We appreciate the opportunity to submit this proposal and cost estimate for administration services pertaining to your Collective-Action Notice.

For purposes of our proposal, we have assumed that we would mail a single-postcard Summary Notice to approximately 100 potential class members. KCC will process any filed Opt-Ins.

Our base administration services include data and forms management, the printing and mailing of notices to the potential class members, processing of returned undeliverable mail, processing all opt-ins filed and drafting a declaration pertaining to our notice procedures. In addition, we will provide live telephone support for the potential class members to call for more information about this lawsuit. Assuming no substantial increase in the number of potential class members to be noticed, we will charge a flat rate of \$2,000 for these services.

With experience administering more than 1,500 settlements, KCC provides high-quality and cost-effective class action administration services including pre-settlement consulting, settlement funds escrow, class member data management, legal notification, call center support, claims administration as well as disbursement and tax reporting services. We are a knowledgeable partner who proactively works with you throughout the settlement administration process and are well-positioned to handle your matter immediately.

Our domestic infrastructure, the largest in the industry, includes a 900-seat call center and document production capabilities that handle hundreds of millions of documents annually. Last year, our disbursement services team distributed \$250 billion to payees in the form of 29 million checks and 11 million electronic transfers.

Please contact me with any questions regarding the enclosed case assumptions and cost estimate. We will hold this proposal and estimate open for ninety days from the date of this letter. Thank you for your time and consideration.

Sincerely,

A handwritten signature in dark ink, appearing to read 'Patrick J. Ivie', with a stylized flourish at the end.

Patrick J. Ivie
VP, Class Action Services
Tel: 310.776.7385
Cell: 310.795.9742
pivie@kccllc.com